

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Chris Carson, Esq., SBN 280048
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Oziel Sawyer III,

Plaintiff,

v.

Zilan, Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Oziel Sawyer III complains of Zilan, Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is paralyzed, cannot walk and uses a wheelchair for mobility.

2. Defendant Zilan, Inc. owned Soma Restaurant & Bar located at or about 85 5th Street, San Francisco, California, in September 2019.

3. Defendant Zilan, Inc. owns Soma Restaurant & Bar ("Restaurant") located at or about 85 5th Street, San Francisco, California, currently.

4. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their

1 relative responsibilities in causing the access violations herein complained of,
2 and alleges a joint venture and common enterprise by all such Defendants.
3 Plaintiff is informed and believes that each of the Defendants herein,
4 including Does 1 through 10, inclusive, is responsible in some capacity for the
5 events herein alleged, or is a necessary party for obtaining appropriate relief.
6 Plaintiff will seek leave to amend when the true names, capacities,
7 connections, and responsibilities of the Defendants and Does 1 through 10,
8 inclusive, are ascertained.

9
10 **JURISDICTION & VENUE:**

11 5. The Court has subject matter jurisdiction over the action pursuant to 28
12 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
13 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

14 6. Pursuant to supplemental jurisdiction, an attendant and related cause
15 of action, arising from the same nucleus of operative facts and arising out of
16 the same transactions, is also brought under California's Unruh Civil Rights
17 Act, which act expressly incorporates the Americans with Disabilities Act.

18 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
19 founded on the fact that the real property which is the subject of this action is
20 located in this district and that Plaintiff's cause of action arose in this district.

21
22 **FACTUAL ALLEGATIONS:**

23 8. Plaintiff went to the Restaurant in September 2019 with the intention
24 to avail himself of its goods, motivated in part to determine if the defendants
25 comply with the disability access laws.

26 9. The Restaurant is a facility open to the public, a place of public
27 accommodation, and a business establishment.

28 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed

1 to provide accessible dining surfaces.

2 11. On information and belief, the defendants currently fail to provide
3 accessible dining surfaces.

4 12. Plaintiff personally encountered these barriers.

5 13. By failing to provide accessible facilities, the defendants denied the
6 plaintiff full and equal access.

7 14. The failure to provide accessible facilities created difficulty and
8 discomfort for the Plaintiff.

9 15. The defendants have failed to maintain in working and useable
10 conditions those features required to provide ready access to persons with
11 disabilities.

12 16. The barriers identified above are easily removed without much
13 difficulty or expense. They are the types of barriers identified by the
14 Department of Justice as presumably readily achievable to remove and, in fact,
15 these barriers are readily achievable to remove. Moreover, there are numerous
16 alternative accommodations that could be made to provide a greater level of
17 access if complete removal were not achievable.

18 17. Plaintiff will return to the Restaurant to avail himself of its goods and to
19 determine compliance with the disability access laws once it is represented to
20 him that the Restaurant and its facilities are accessible. Plaintiff is currently
21 deterred from doing so because of his knowledge of the existing barriers and
22 his uncertainty about the existence of yet other barriers on the site. If the
23 barriers are not removed, the plaintiff will face unlawful and discriminatory
24 barriers again.

25 18. Given the obvious and blatant nature of the barriers and violations
26 alleged herein, the plaintiff alleges, on information and belief, that there are
27 other violations and barriers on the site that relate to his disability. Plaintiff will
28 amend the complaint, to provide proper notice regarding the scope of this

lawsuit, once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

19. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

20. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are

1 readily accessible to and usable by individuals with disabilities,
2 including individuals who use wheelchairs or to ensure that, to the
3 maximum extent feasible, the path of travel to the altered area and
4 the bathrooms, telephones, and drinking fountains serving the
5 altered area, are readily accessible to and usable by individuals
6 with disabilities. 42 U.S.C. § 12183(a)(2).

7 21. When a business provides facilities such as dining surfaces, it must
8 provide accessible dining surfaces.

9 22. Here, accessible dining surfaces have not been provided.

10 23. The Safe Harbor provisions of the 2010 Standards are not applicable
11 here because the conditions challenged in this lawsuit do not comply with the
12 1991 Standards.

13 24. A public accommodation must maintain in operable working condition
14 those features of its facilities and equipment that are required to be readily
15 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

16 25. Here, the failure to ensure that the accessible facilities were available
17 and ready to be used by the plaintiff is a violation of the law.

18
19 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
20 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
21 Code § 51-53.)

22 26. Plaintiff repleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
25 that persons with disabilities are entitled to full and equal accommodations,
26 advantages, facilities, privileges, or services in all business establishment of
27 every kind whatsoever within the jurisdiction of the State of California. Cal.
28 Civ. Code § 51(b).

27. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

28. Defendants' acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

29. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: October 17, 2019

CENTER FOR DISABILITY ACCESS

By:



Amanda Seabock, Esq.
Attorney for plaintiff